Court No.3

Criminal Application No. 66 of 2003

Satya Narayan Rastogi …….Applicant.

Versus

State and others …….Respondents.

Hon'ble Irshad Hussain, J.

By means of this petition U/S 482 Cr.P.C., petitioner prayed for setting aside of the order dated 10-12-2002 passed by he respondent No.2 in criminal revision No. 688/2002.

On an application U/S 156(3) Magistrate concerned ordered an investigation by police in regard to cognizable offence. Charge sheet on completion of investigation was filed and learned Magistrate on 10-6-002 took cognizance of it for offences U/Ss 467, 468, 471, 420 I.P.C. against the accused-respondent No.3. Aggrieved by the said order passed in criminal case No. 1928/002 P.S. Ranipur, district Haridwar, a revision was preferred in which impugned order dated 10.12.2002 was passed. The learned Sessions Judge held that in view of bar created by section 195(1)(b)(ii) of the Cr.P.C., the learned Magistrate could not have taken cognizance of the offences of forgery etc committed in regard to a document produced in judicial proceedings of a court and also because the order was passed without application of mind and appreciation of facts and material relevant to the mater in issue.

Heard Sri Alok Singh, learned counsel for the petitioner and Sri Pankaj Miglani learned counsel for respondent No.2.

The only question which arises for consideration is whether the bar of Section 195(1)(b)(ii) of the Code of Criminal Procedure is attracted to a case when forgery of document was committed before the same was produced in court where judicial proceedings proceeded according to law.

Learned counsel for the petitioner made submission favouring a answer in negative to the question and placed reliance on an Apex Court's decision by three Judge bench in *Sacchida Nand and another vs. State of Bihar and another; (1988)-2 Supreme Court Cases 493.*1 In the case before the Apex Court similar question of law was in issued and the Court after

referring to earlier decisions laid down the ratio that the bar contained in section 195 (1)(b)(ii) of Cr.P.C. is not applicable to a case where forgery of the document was committed before it was produced in a Court. In the instant case it is not in dispute that the will of Smt. Satyawati and a writing dated 19-9-81, genuineness of which was under challenge where allegedly forged before the same was produced in the court proceedings. Considering this the submission of the learned counsel that the ratio of the recorded decision squarely apply to the facts of the instant case can safely be accepted.

On behalf of respondent No.2 the reliance was placed on a decision of Apex Court in the matter of *Surjit and other versus Balbir Singh; 1998 (32) S.C.C. 343 (S.C.)* and another decision in the matter of *Randhir Singh versus State of Haryana and others; 2001(1) Crimes 108 (S.C.)* and also a decision of Allahabad High Court in the case of *Narvadeswar Tiwari and another versus State of U.P.; 1987 (24) SCC 63* but in none of these cases the any controversy in issue was the same as above and therefore these have no bearing in giving answer to the question framed and which may decisively invite a answer in negative. As mentioned above the questionable will and writing were fled in civil suit between the relevant parties and it was submitted that since there is no decision of a competent Court of Civil jurisdiction that the same are forged, therefore the criminal proceedings for an offence of forgery etc. could not have been launched by the petitioner and consequently the impugned order passed by the learned Sessions Judge require no interference. The law is well settled that criminal proceedings need not to be quashed merely because of pendency of civil proceedings between the relevant parties. On this point the learned counsel for the petitioner cited the deicision of the Apex Court in the matter of *Kamala Devi Aggarwal versus State of West Bengal and other; (2002) 1 Supreme Court Cases 555.* The principle laid down in this decision is that quashing of criminal proceedings arising out of an action of forgery etc in relation to a document should not be quashed merely on the ground that the same document was under scrutiny in a civil proceedings initiated by the same complaint. This decision also apply to the facts of the instant case and there is no merit in the argument of the learned counsel for the respondent that criminal

complaint and proceedings thereon about commission of crime of forgery in relation to the will and writing should not proceed when the genuineness of the same document is in issue in civil proceedings between the same parties.

Learned Session Judge also adversely commented upon the order of taking of the cognizance on the ground that the order dated 10-6-2002 was passed without application of mind. It is against well settled that while taking cognizance of an offence either on a complaint or on a charge sheet the competent Magistrate is not required to write a detailed order by sifting of the evidence or the merit of the case. The Apex Court in the case of *Kantibhadra Shah v. State of West Bengal; (2000) 1 S.C.C. 723* laid stress that there is no legal requirement to write a detailed order at the stage of issuing process. Considering this propisition the anxiety of the learned Sessions Judge was not warranted and on this ground the order of taking cognizance could not have been set aside.

For the reasons mentioned above the impugned order dated 10.12.2002 can not legally be sustained and the same is liable to be quashed. In other words the petition succeed and is allowed accordingly. The order dated 10-12-2002 passed by respondent No.2 is set aside.

(Irshad Hussain, J.)

Dated: 23.8.2003
ISB